



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
OFFICE OF SMART GROWTH
PO Box 204
TRENTON NJ 08625-0204

JON S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

EILEEN SWAN
Executive Director

August 20, 2006

The Honorable Thomas J. Molnar, Mayor
The Township of West Amwell
150 Rocktown-Lambertville Road
Lambertville, NJ 08530-3509

**Re: Follow up to OSG's Request for Additional Information
West Amwell Township Petition for Initial Plan Endorsement**

Dear Mayor Molnar:

Thank you for your submission of the additional requested information identified within the Office of Smart Growth's letter of June 13, 2006. Based on our review of the submitted information, some of the items have been adequately addressed; however, additional information is needed on others. This letter serves to outline the outstanding information and concerns that are needed for OSG and the State agencies to continue our evaluation of the Township's petition for consistency with the goals, policies and strategies of the State Plan. Please submit the information described below by September 11, 2006, as this is the end of the 90 day extension period. If the Township needs additional time to respond, please let us know that as soon as possible so that we can better assist you in meeting your goals and to help the Township to achieve Initial Plan Endorsement from the State Planning Commission.

Please submit the information described below:

Implementation Strategy for Vision Statement and Stated Goals

- The Township of West Amwell has provided a master plan that recognizes the importance of agriculture and its contribution to the character of the community. Further, a significant portion of the Township's current land use is active agriculture. The Office of Smart Growth has concerns over the Township's agriculture retention policies and whether or not the current mechanisms in place are adequate to achieve your stated planning goals. Methods such as center-based, mixed-use areas to accommodate growth can supplement traditional farmland preservation programs to help you increase the amount of agricultural land preserved while accommodating growth in a sustainable manner. There are concerns that unless such an area is designated with the appropriate measures to assure center-based development, growth will occur in large lot sprawl which will fragment the agricultural land, have a detrimental impact on the industry as well as the rural character that the Township wants to preserve. Absent a more comprehensive agricultural retention program, we will not be able to recommend that your petition for Plan Endorsement be approved.

- OSG has been given different numbers with regard to the Township Open Space Tax, such as 4 cents per thousand. Please affirm what the correct numbers are for this Tax.
- In addition, the Township has stated that approximately 3,000 acres have been preserved within the Township. Please submit a breakdown by program of the 3,000 acres.

Inconsistencies with the Groundwater Resource Evaluation

- The Township's Wastewater Management Plan (WMP) amendment should include an analysis of groundwater recharge and the appropriate zoning densities to adequately protect drinking water resources. If there are inconsistencies between that analysis and the Township's zoning, the Department of Environmental Protection (DEP) will recommend strategies to address these issues through the WMP amendment process that will need to be agreed to prior to Plan Endorsement.

Population/Employment Projections

- The Township is correct that its 211-unit residential projection has a presumption of validity in the Township's petition for substantive certification because it is greater than the North Jersey Transportation Authority's (NJTPA) residential projection. However, the Township should make the following changes in the supplement that was sent earlier:
 - Eliminate or correct the statement that West Amwell's "growth in population and housing will be less than anticipated by NJTPA".
 - Correct the NJTPA household projection figure, which should be 20 (instead of the Census-derived figure of 15.94)

Zoning:

- The Township has stated that there are unresolved issues with the Fulper General Development Plan. Please submit an outline describing these unresolved issues so that we may better assist the Township to resolve them. Also we received a copy of a letter dated June 21, 2006 (attached) from William A. Shurts to Nancy Paladino, Chairperson of the West Amwell Township GDP Committee that says, "The Township Planner, Anthony Mercantante, was directed to review the Township and to advise the Committee as to the location of appropriate areas for a development receiving zone. Mr. Mercantante ultimately advised the Committee that there were no such sites in the Township. The lack of infrastructure and limiting characteristics of the land throughout the Township prevented the Planner from recommending any site as a development receiving area." Please provide us with the specific analysis that was performed to make this determination.

Planning and Implementation Agreement (PIA)

Zoning:

- The Office of Smart Growth is aware that the Township intends to decrease the number of allowable dwelling unit density in the Mixed-use Highway Commercial Zone to realistically reflect what could be accommodated. This task should be added to the PIA with a proposed timetable for completion.

Other clarification information:

Proposed Dual Septic System Ordinance:

- At the Joint Planning Board/Township Committee meeting, reference was made to a proposed dual septic system ordinance for new developments, which would seem to indicate that there are


septic system failures in West Amwell. Is this in fact the case? If so, OSG and the state agencies may recommend additional strategies to address this situation.

Water allocation:

- OSG has requested that DEP provide the Township with figures regarding the Township's estimated annual water allocation.

Thank you again for your participation and dedication to the Plan Endorsement process. Please be assured that the Office of Smart Growth and our state agency partners are committed to assisting the Township to achieve its planning goals and Initial Plan Endorsement by the State Planning Commission. If you have any questions or concerns, please feel free to contact Barry Ableman, Area Planner for Hunterdon County at (609) 292-3228 or via email at bableman@dca.state.nj.us.

Sincerely,



Eileen Swan
Executive Director

ES:ba:kp

Attachment

c: Lora Olsen, Municipal Clerk
Anthony P. Mercantante, PP/AICP, Planner
Joseph I. Donald, PP, Deputy Executive Director, OSG
Courtenay Mercer, PP/AICP, Planning Director, OSG
Ben Spinelli, Policy Director, OSG
Barry Ableman, Area Planner, OSG
Liz Semple, NJDEP, *via email*
Bill Purdie, NJDEP, *via email*
Keith Henderson, COAH, *via email*
Susan Weber, NJDOT, *via email*
Roberta Lang, NJDA, *via email*

LAW OFFICES
FELTER, CAIN & SHURTS

J. KNOX FELTER (1933-1976)
ROGER M. CAIN (1965-2002)
WILLIAM A. SHURTS

1 OLD HIGHWAY #28
REPLY TO: P.O. BOX 492
WHITEHOUSE, N.J. 08888

(908) 534-7619
FAX NO. (908) 534-7625

June 21, 2006

Nancy Palladino, Chairperson
West Amwell Township GDP Committee
150 Rocktown-Lambertville Road
Lambertville, New Jersey 08530

Re: GDP and Letter of Intent Issues

Dear Chairperson Palladino:

I was asked by the Committee to take a look at the two documents which set forth the understanding between the Fulpers and the Township and the approval for the Fulper Family's Development Plan granted by the Planning Board. Specifically, the documents are the Letter of Intent (hereafter L.I.) dated September 17, 2003 signed by Mr. and Mrs. Fulper and by the Township and the General Development Plan approval resolution (hereafter GDP Resolution) adopted by the Planning Board on December 2, 2003 and memorialized by the Board on February 17, 2004. The parties are exploring ways to reach an agreement to allow the Township to acquire certain rights to the land designated as Parcel E in the GDP Resolution while allowing the current owners to retain fee simple ownership and continue to use the premises for agricultural purposes. The following is my understanding of the issues which the Committee asked me to review.

1. **How do the L.I. and GDP Resolution deal with the individual parcels which are part of the general development plan?** The L.I. refers to each separate farm by name and by lot and block. The GDP Resolution refers to the five parcels for which individual plans were submitted as parcels A through E. The parcels have been designated in the GDP Resolution as follows:

- a. Parcel A is the Heifer Farm known as Block 20, Lot 2, a 139.91 acre tract.
- b. Parcel B is the Home Farm known as Block 21, Lot 38 and Block 13, Lot 45 which contains a total of 90.31 acres.
- c. Parcel C includes the Simonye Farm South (Block 17, Lot 14) and the

Wargo Farm South (Block 17, Lot 15). Together, they consist of 120.21 acres.

- d. Parcel D is the Stoy Farm known as Block 19, Lot 5 consisting of 126.08 acres.
- e. Parcel E includes the Lenk Farm, Block 8, Lot 29.02; the Simonye Farm North, Block 8, Lot 33; and the Wargo Farm North, Block 8, Lot 32. The three parcels are contiguous and consist of approximately 130.40 acres.

Parcels A, B and D. Both the L.I. and the GDP Resolution express an intent to preserve Parcels A, B and D. The methodology for the acquisition of these tracts for farmland preservation is set forth in paragraph 2 of the L.I. The acquisition method set forth in the L.I. is consistent with provisions in the GDP Resolution dealing with the Heifer Farm (paragraphs 10 through 15); the Home Farm (paragraphs 16 through 19); and the Stoy Farm (paragraphs 24 through 27). At this time, the acquisition process is ongoing. Some of the property has already been preserved and several additional closings involving these tracts are anticipated in a very short time.

Parcels C and E. Paragraph 5 of the L.I. provides for 69 building rights on these two parcels with 67 of the building rights assigned to Parcel E. The remaining two building rights are assigned to Parcel C. The GDP Resolution is consistent as it makes provision for final development of Parcel C, retaining the two lots which presently exist and providing for a single building opportunity on each of those parcels. The GDP Resolution notes that the remaining development potential of Parcel C under the cluster ordinance provisions has been incorporated into the plans for Parcel E. (See paragraphs 20 through 23 of the GDP Resolution).

Paragraph 5 of the L.I. provides that the application will be redesigned in this area to cluster 67 of the building rights on the Lenk, Wargo North and Simonye North parcels in the R-2 zone to the extent feasible. The GDP Resolution is consistent with the treatment of Parcel E as set forth in paragraphs 28 through 36.

2. **Was the Township obligated under the L.I. and/or the GDP Resolution to provide an off site receiving area to allow the transfer of building opportunities from Parcel E?** Paragraph 6 of the L.I. obligates the Township to "seek to designate a development receiving area and seek to implement ordinances to allow the transfer of building rights to that area within three years of GDP approval". Paragraph 67 of the GDP Resolution states that no development application for Parcel E will be submitted during that period of time (three years) in order to allow a window for the Township to look into the acquisition or transfer of some or all of the development rights for Parcel E. Paragraph 63 also discusses the time for exploring opportunities for the acquisition or transfer of the development rights to Parcel E. (GDP Resolution, Paragraph 63). In discussing the effect of the three year period of repose upon development application for Parcel E, the GDP Resolution proposes in Paragraph 67 that the Township may "also explore the possibility of

creating a development receiving zone and an ordinance to allow the transfer of building rights to that development area."

While the combined effect of the provisions of these two instruments is to require the Township to consider designating an off site area as a development receiving zone, the Township is not obligated to ultimately provide such a zone, irregardless of the appropriateness of other sites in the municipality. Since the execution of the L.I. and the GDP resolution, the Township has in fact discussed and considered this issue on a number of occasions with most of the discussion taking place at the public hearing on the GDP and at subsequent Planning Board meetings and GDP Committee meetings.

The Township Planner, Anthony Mercantante, was directed to review the Township and to advise the Committee as to the location of appropriate areas for a development receiving zone. Mr. Mercantante ultimately advised the Committee that there were no such sites in the Township. The lack of infrastructure and the limiting characteristics of the land throughout the Township prevented the Planner from recommending any site as a development receiving area. At this point, I am not aware that anything further is being done with respect to that issue. Nonetheless, the Township has met its requirements under the L.I. and the GDP Resolution.

3. **Should Parcel C be a factor in determining the price for retiring building opportunities on Parcel E?** This is not an issue which was specifically discussed in either the L.I. or the GDP Resolution. The L.I. says very little about the lands in Parcel C. Paragraph 5 of that instrument allocates 69 building rights to Parcels C and E and then goes on to state that 67 of those building rights will be clustered on Parcel E. By process of elimination, there are only two building rights assigned to Parcel C. That is consistent with the GDP Resolution. (Paragraphs 20 through 23). The two existing lots will remain as the only lots in the development scheme for Parcel C.

The GDP Resolution specifically provides that Parcel C will be treated independently of Parcel E. The three year period of repose for a development application affects only Parcel E and not Parcel C. A plan for the development of Parcel C in accordance with the L.I. and the GDP Resolution may be presented at any time. Paragraph 70 of the GDP Resolution provides that "if the applicant has not submitted a final plan for Parcel C and the final plans for Parcel E is submitted then before Parcel E can be approved, Parcel C must be restricted against further subdivision or other type of division except in accordance with the GDP approval, specifically paragraphs 21 and 22. The GDP resolution notes at paragraph 64 that the overall plan makes "reasonable provision for the preservation of Parcels A, B, C and D."

Since the type and amount of development allowed on Parcel C is known and since the L.I. has provided at paragraph 9 that "the effective zoning for appraisals and GDP consideration will be two acre residential for Stoy, Wargo North, Simonye North and Lenk, and three acre residential for Home, Heifer, Wargo South and Simonye South", it would appear that any future acquisition of Parcel C for preservation purposes would proceed in accordance with paragraph 2 of the L.I.

The same methodology would seem to be appropriate if and when Parcel C is entered into a farmland preservation program. Since the development plan for Parcel C has been established and a methodology appears to be in place to provide for its ultimate inclusion into a preservation program, I conclude that Parcel C would not be considered when setting the value for the acquisition of development rights or an overall acquisition of Parcel E as part of an approved preservation program. Although I am not an expert on the acquisition methods employed by public bodies in such cases, I do not believe consideration of Parcel C in such case would be allowed under the guidelines which are in effect.

4. **Has the applicant/owner been guaranteed any specific number of building lots if or when Parcel E is developed?** The maximum number of building rights for Parcel E is set forth in paragraph 5 of the L.I. and paragraph 31 of the GDP Resolution. Paragraph 72 of the GDP Resolution noted that the submissions as part of the GDP Resolution are conceptual in nature and are not intended to be anything more than that. That fact is highlighted in paragraphs 53 and 54 of the GDP Resolution. In those paragraphs and also in paragraph 55 and 56, the parties indicate that the applicant has locked in a maximum number of 67 lots. Paragraph 54 states that "at the present time, it not possible to know if a developer can actually get 67 lots but will have the opportunity to present a plan which demonstrates that 67 lots are feasible and can be approved." Without a detailed engineering review of the site in the context of whatever rules and regulations, other than minimum lot size requirement under the West Amwell Township Ordinance, are in effect in the time fo the application, there is no way to determine the exact number of building rights which can actually be approved.

5. **What will be the nature of the acquisition of Parcel E by the Township and what practical limitations are there on such acquisition?** Discussions of the acquisition of rights in Parcel E by the Township and/or other public bodies have primarily focused upon retirement of development rights. This would likely be accomplished by a conservation easement or other similar device which would be implemented as part of an overall acquisition for preservation purposes only. The property owner would likely remain as the fee simple owner of the premises and the property could continue to be used for agricultural purposes subject to whatever building rights would be allowed under the terms and conditions of such acquisition.

As noted above, the L.I. has spelled out the methodology for dealing with the acquisition of Parcel E for preservation purposes. Paragraph 9 provides in pertinent part "the effective zoning for appraisals and GDP consideration will be two acre residential for . . . Wargo North, Simonye North and Lenk . . ." This language is consistent with the approach advanced by the GDP Committee during negotiations. The property owner's approach thus far, however, has not been consistent with the provisions of the L.I. Their approach seems more appropriate for negotiations between a property owner and a developer contemplating a fee simple transfer with a purchase price based upon the number of approved units. I do not know why the property owner has not followed the previously agreed upon methodology.

Nancy Palladino, Chairperson
June 21, 2006
Page 5

In order to complete this transaction, all parties must follow the funding regulations which are in place and which govern the actions of the Township and its funding partners.

The Township and the other parties, including the property owner, must adhere to the agreed upon methodology which governs appraisals, contracts and final acquisition. The methodology suggested by the property owner in this case is inconsistent with the guidelines under which the Township must act. Unless all parties work in accordance with the agreed upon methodology, it will be difficult or impossible for the parties to reach a final agreement on the ultimate issues.

I believe that the foregoing addresses the issues which were discussed with me. If something further is needed, please advise.

Very truly yours,

FELTER, CAIN & SHURTS

A handwritten signature in black ink, appearing to read "William A. Shurts". The signature is fluid and cursive, with the first name "William" being more prominent than the last name "Shurts".

William A. Shurts

WAS:jam

cc: Lora Olsen
All GDP Committee Members